

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

U.S. BANK NATIONAL ASSOCIATION, in  
its capacity as Trustee, JOSHUA N. TERRY,  
and ACIS CAPITAL MANAGEMENT, L.P.,

*Plaintiffs,*

v.

THE CHARITABLE DONOR ADVISED  
FUND, L.P., CLO HOLDCO LTD., and  
NEXPOINT DIVERSIFIED REAL ESTATE  
TRUST,

*Defendants.*

Case No. 1:21-cv-11059-GHW

**NOTICE OF PLAINTIFFS' MOTION  
TO DISMISS THE DAF PARTIES'  
AMENDED COUNTERCLAIMS AND  
FOR JUDGMENT ON THE  
PLEADINGS**

**ORAL ARGUMENT REQUESTED**

PLEASE TAKE NOTICE that Plaintiffs U.S. Bank, National Association, in its capacity as trustee, Joshua N. Terry, and Acis Capital Management, L.P. (collectively, the "Plaintiffs"), by and through their undersigned counsel, will move this Court, at a date and time to be determined by the Court, for (1) an order dismissing in their entirety with prejudice the amended counterclaims brought by Defendants The Charitable Donor Advised Fund, L.P. and CLO HoldCo, Ltd (collectively, the "DAF Parties") (Dkt. 155) under Rule 12(b)(6) of the Federal Rules of Civil Procedure, and (2) for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure on Plaintiffs' Claims against the DAF Parties in the Amended Complaint (Dkt. 15). This Motion is based on the accompanying Plaintiffs' Memorandum of Law in Support of Their Motion to Dismiss Defendants' Counterclaims and for Judgment on the Pleadings on Plaintiffs,

and the Declarations of Blair A. Adams, and Todd McGuffin, each dated August 15, 2022, together with exhibits thereto.

Dated: New York, New York  
August 15, 2023

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**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that on August 15, 2023, he caused a true copy of the foregoing document to be served via CM/ECF to all counsel of record.

/s/ Misha Boutilier  
Misha Boutilier